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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,573	03/18/2004	Anthony F. Kummerer	95,884	3556

7590 12/14/2004

Office of Counsel Code OC4  
Naval Surface Warfare Center  
Indian Head Division  
101 Strauss Ave., Bldg. D-31  
Indian Head, MD 20640-5035

EXAMINER
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HAYES, BRET C

ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/807,573

Applicant(s)

KUMMERER ET AL.

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 2,6 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 18 MAR 2004 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered. Either no form PTO-1449 was filed with the IDS or the form was not scanned into the application. In any event, examiner respectfully requests Applicants submit another IDS properly including the form PTO-1449.

### ***Specification***

2. The use of the trademarks VELOSTAT®, MYLAR®, KEVLAR®, SPECTRA®, VECTRAN®, VELCRO® and LEXAN® has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Objections***

3. Claims 2, 6 and 14 are objected to because of the following informalities: claim 2, line 8, remove one repetition of “of the” between “edge” and “pack”; claim 6, line 1, “comprise” should be --comprise-- as the correct conjugation for “a plurality”; and claim 14, line 2, “hardens” should be --harden-- , as “multiple layers...which hardens” is incorrect, or the “polycarbonate material” should more specifically be recited as being the material which hardens, for clarity. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 11 recites the limitation “a flap of the fabric” in line 2. The claim depends upon claim 2, which introduces “a second fabric” and “a third fabric” in lines 4 and 7, respectively.

Therefore, it is unclear, exactly which fabric the claim references.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No.

6,354,477 B1 To Trummer.

9. Trummer discloses the claimed invention including a pack comprising a first section – any of 610, 612, 614, having an opening (pockets generally have an opening) and closure means 616, 618, a second section 100 comprising a second opening 410, second closure means, for example, VELCRO®, as set forth beginning at col. 8, line 55, a fabric comprising at least one layer of conductive material, as set forth beginning at col. 9, line 21, substantially surrounding

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the first section with a panel between the first and second sections having at least one blast resistant and fragmentation inhibiting material\*. In this case, the terms “blast resistant” and “fragmentation inhibiting” are considered broad enough to include the pack of Trummer, as any material used in this type of pack is blast resistant and fragmentation inhibiting -- considering that any commercially available pack can ‘resist the blast’ and ‘inhibit the fragments’ of at least small-sized fireworks, if not medium-sized as well, which are considered to be energetic materials that include energetic initiators. Absent any further structural limitations, Trummer discloses the claimed invention.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trummer.

12. Re – claim 2, Trummer discloses the claimed invention except for the selection fabrics. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the claimed fabrics, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ

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multiple fabrics, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. In other words, backpacks are generally made to be durable, but to make a backpack ‘blast resistant’ and ‘fragmentation inhibiting’ one of ordinary skill in the art would conceivably contemplate sturdier materials and multiple fabrics without much undo experimentation.

13. Re – claim 5, Trummer discloses the use of nylon at col. 8, line 10. Also, see claim 2 above.

14. Re – claim 8, Trummer discloses removable pocket tops 106.

15. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,646,364 to McClung et al. (*McClung*) in view of Trummer.

16. McClung discloses transporting primary explosives 16E and initiators 40 except for the use of a conductive material. Trummer teaches using a conductive material in the same field of endeavor for the purpose of reducing the risk of static electrical discharges. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify McClung to include the conductive material as taught by Trummer in order to reduce the risk of static electrical discharges.

17. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClung in view of Trummer, further in view of US Patent No. 6,161,738 to Norris.

18. McClung in view of Trummer discloses the invention substantially as claimed except for the at least one layer of a polycarbonate material. Norris discloses the use of materials, such as KEVLAR®, TWARON® and ZYLON®, beginning at col. 5, line 5, and others, beginning about line 15, “high density plastic, steel, aluminum, resin composite material, titanium, and similar

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materials...", in the same field of endeavor for the purpose of "stop[ping] or impeded[ing] a bullet or similar high speed projectile." While polycarbonate is generally used as a glass substitute due to its transparency and shatter-resistance, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify McClung in view of Trummer to include a ballistic resistant material as taught by Norris, including a polycarbonate material, since the equivalence of a polycarbonate material and the materials cited above for their use in the ballistic-resistance art and the selection of any known equivalents to ballistic-resistant materials would be within the level of ordinary skill in the art.

***Conclusion***

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

12/8/04



TERI PHAM LUU  
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